



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP-2019-0012]

Notice of Decision on Domestic Interested Party Petition

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of decision on domestic interested party petition.

SUMMARY: This document provides notice of U.S. Customs and Border Protection's (CBP) decision regarding the tariff classification of certain steel special profiles for the manufacture of forklift truck masts and carriages. On April 3, 2019, CBP published in the *Federal Register* a Notice of Receipt of a Domestic Interested Party Petition, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the subject steel special profiles. The Petition asked CBP to review the classification of these products and revoke New York Ruling Letter (NY) N293371, dated February 8, 2018. After reviewing 14 comments received in response to the Petition, CBP has issued a decision agreeing with Steel of West Virginia, Inc. (Petitioner) and revoking NY N293371, *supra*, as well as NY F83480, dated March 13, 2000, which pertained to merchandise substantially similar to the subject steel special profiles. This Notice advises Petitioner and all interested parties of CBP's determination.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection at (202) 325-0321.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document concerns the tariff classification of certain steel special profiles for the manufacture of forklift truck masts and carriages.

Classification of Nonalloy Steel Special Profiles

Merchandise imported into the customs territory of the United States is classified under the HTSUS. The tariff classification of merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRIs). The GRIs are part of the HTSUS and are to be considered statutory provisions of law for all purposes. See Section 1204 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418 (Aug. 23, 1988); 19 U.S.C. 3004.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided such headings or notes do not otherwise require, then according to the other GRIs. See GRI 1, HTSUS (2019). GRI 6 prescribes that, for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, according to GRIs 1 to 5, on the understanding that only subheadings at the same level are comparable. See GRI 6, HTSUS (2019).

The Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System) represent the official interpretation of the World Customs Organization on the scope of each heading. See H.R. Conf. Rep. No. 100-576, 100th Cong., 2d Sess. 549 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1582; Treasury Decision (T.D.) 89-80, 54 FR 35127, 35128 (August 23, 1989). Although not binding on the contracting parties to the Harmonized System Convention or considered to be dispositive in the interpretation of the Harmonized System, it is CBP's position that the Explanatory Notes should be consulted on the proper scope of the Harmonized System. T.D. 89-80, 54 FR at 35128.

In NY N293371, dated February 8, 2018, the steel special profiles are incomplete mast rails and finger bars (also known as carriage bars) produced by Mannstaedt GmbH in Germany.¹ The articles are imported either cut to a fixed length in accordance with customer instructions or in lengths designed to fit within the transporting cargo container. The subject beams and bars are not joined to form the mast weldments in their condition as imported. The beams need to be drilled and welded to plates and cross bars before acquiring the shape and dimensions necessary for assembly into a mast as well as cleaned to prepare them for painting. The finger bars must be cut to size and notched in specific places along their length depending upon their placement as upper or lower bars, as well as cleaned, painted, and welded to the actual carriage assembly. CBP previously classified the steel

¹ The Petitioner indicated that it believed the subject steel special profiles were from the United Kingdom and Germany. It is CBP's belief that the steel special profiles covered by NY N293371 are of German origin; however, the reasoning applicable in the attached decision would apply equally to such products of U.K. origin (which are at this time also subject to additional duties).

profiles in subheading 8431.20.00, HTSUS, as parts suitable for use solely or principally with forklifts of heading 8427, HTSUS.

Filing of Domestic Interested Party Petition

On October 3, 2018, counsel filed a Petition on behalf of Steel of West Virginia, Inc., under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that CBP reconsider its decision in NY N293371 and classify the subject steel special profiles under subheading 7216.50.00, HTSUS, which provides for “Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded.” The column one, general rate of duty for subheading 7216.50.00 in 2018 and today is free. However, on March 8, 2018, pursuant to section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862), Presidential Proclamation 9705 (83 FR 11625) imposed additional duties on steel products of Germany of subheading 7216.50.00, HTSUS, and steel products of subheading 7216.50.00 are currently subject to additional 25 percent duties under Subchapter III, Chapter 99, U.S. Note 16(b), HTSUS. Importers of such products must also identify subheading 9903.80.01, HTSUS, at entry.

On April 3, 2019, CBP published a Notice of Receipt of a Domestic Interested Party Petition in the *Federal Register* (84 FR 13057). The Notice invited written comments on the Petition from interested parties. The comment period closed on May 3, 2019. CBP received 14 comments in response to the Notice. Seven comments reiterated the Petitioner’s position that the merchandise should be

classified in subheading 7216.50.00, HTSUS, as other angles, shapes and sections. The other seven commenters argued that the profiles should remain classified in subheading 8431.20.00, HTSUS, as parts suitable solely or principally with forklifts of heading 8427, HTSUS.

Decision on Petition and Notice of CBP's Decision

After review of the arguments set forth by Petitioner as well as those set forth in the responses to the *Federal Register* Notice, CBP has determined that the classification decision in NY N293371 was incorrect. In HQ H303762, which is attached to this Notice, CBP has granted the Domestic Party Petition and revoked the classification determination set forth in NY N293371.

CBP determined in HQ H303762 that the articles at issue are not parts of forklifts. By application of GRIs 1 and 6, the nonalloy steel mast beams and finger bars in NY N293371 are steel special profile shapes of heading 7216, HTSUS, classified specifically under subheading 7216.50.00, which provides for angles, shapes and sections of iron or nonalloy steel, other angles shapes and sections, not further worked than hot-rolled, hot-drawn or extruded. The instant merchandise, imported in bundles of beams and bars of various sizes and shapes, is described by the term “angles, shapes, and sections” set forth in note 1(n) to chapter 72, whether or not the product is a standard shape or a special shape designed for a particular application such as use in a lifting mast for a forklift truck. It is simply the beams necessary to compose the weldments that form the inner, intermediate, or outer uprights of the completed mast and crossbars, which in turn are used to construct a

portion of the carriage. While the subject merchandise may ultimately be destined for incorporation into a forklift, it is not identifiable as such based on its condition as imported.

Specifically, the beams are not welded to the plates and bars necessary to create the shape and dimensions of an inner, intermediate or outer weldment of a mast. Similarly, the finger bars are not welded to the frame for attachment between the carriage and mast. Without the various cuts, notches, drilled holes and welding, which take place post-importation, the subject beams and bars do not possess characteristics that dedicate them for use in a forklift truck, or even for the weldment of the lifting mast or carriage, based on their condition as imported.

In light of the fact that the subject bars and beams do not have the approximate size or shape of the forklift mast and carriage, or even of the weldment components of the mast and carriage (*i.e.*, they are not identifiable as parts of a lifting mast), they cannot be considered a part of a forklift or a “blank” of a forklift part.

AUTHORITY:

This Notice is published in accordance with 19 U.S.C. 1516(b) and Section 175.22(a) of the CBP Regulations (19 CFR 175.22(a)).

Dated: June 28, 2019.

John Sanders,

Chief Operating Officer and Senior Official,

Performing the Functions and Duties of the Commissioner,

U.S. Customs and Border Protection.

HQ H303762

June 28, 2019

OT:RR:CTF:CPMM H303762 APP

CATEGORY: Classification

TARIFF NO.: 7216.50.0000; 9903.80.01

Ms. Tamara Browne
Schagrin Associates
900 Seventh Street N.W., Suite 500
Washington, D.C. 20001

RE: Steel Special Profiles; New York Ruling N293371; 19 U.S.C. § 1516; 19 C.F.R. Part 175; Domestic Interested Party Petition

Dear Ms. Browne:

This letter is in response to the Petition by Domestic Interested Party, dated October 2, 2018, filed on behalf of Steel of West Virginia, Inc., pursuant to 19 U.S.C. § 1516 and 19 C.F.R. Part 175. In accordance with 19 C.F.R. § 175.21(a), U.S. Customs and Border Protection (“CBP”) published a Notice titled “Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of Steel Special Profiles for the Manufacture of Forklift Truck Masts and Carriages” in the *Federal Register*, Volume 84, Number 64 on April 3, 2019. The Notice solicited comments, which were due by May 3, 2019. We have reviewed all comments and our decision follows.

FACTS:

The subject of the Petition is the merchandise in New York Ruling Letter (“NY”) N293371, dated February 8, 2018, issued to counsel for Mannstaedt GmbH. The merchandise in NY N293371 is described as follows:

The merchandise in question is described as incomplete steel mast rails and finger bars. The articles are imported either (1) cut to a fixed length in accordance with customer instructions or (2) in lengths designed to fit within the transporting cargo container. You indicate that, in their condition as imported, the mast rails and finger bars are not ready for direct use in fork-lifts. However, the imported articles do have the approximate final shapes of the finished articles. Each article is said to be “manufactured to a single customer’s specifications for use in the lift system of a specific fork-lift truck.” Minor modifications may be made to the articles subsequent

to importation but the value of such operations is said to be estimated substantially lower than the value of the actual imported articles.

The mast rails are the vertical components responsible for lifting, lowering and positioning the loads carried by the fork-lift. The contoured channels in the mast rails are manufactured to fit the specific mast guide bearings used in the fork-lifts. The finger bars are the crossbars to which the forks of a fork-lift are attached. They attach to the mast rails and travel the length of the mast rails during the lifting operations.

A process flow diagram submitted with the ruling request for NY N293371 describes the steps in manufacturing the imported “forklift section” as: purchase, receipt, inspection and transportation of blooms to furnace for heating and reheating in preparation for rolling, descaling, rolling, hot saw to remove crop ends, saw to straightening length, test samples and cool, in line and press straightening, detwisting, recut, bundle, weigh and pack for shipment. The control plan submitted with the ruling request notes that the product at the rolling stage is a “profile shape” and the sample size for inspection is the “whole bar.”

In NY N293371, CBP classified Mannstaedt’s mast rails and finger bars (also known as carriage bars) in subheading 8431.20.00, Harmonized Tariff Schedule of the United States (“HTSUS”), as parts suitable for use solely or principally with forklifts of heading 8427, HTSUS. Petitioner contends that the proper classification for the steel special profiles is under heading 7216, HTSUS, and specifically under subheading 7216.50.00, HTSUS, which covers angles, shapes and sections of iron or nonalloy steel. The column one, general rate of duty for both subheadings is free. On March 8, 2018, pursuant to section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862), Presidential Proclamation 9705 (83 FR 11625) imposed additional duties on steel products of Germany² of subheading 7216.50.00, HTSUS, and steel products of this subheading are currently subject to additional 25 percent duties under subchapter III, chapter 99, U.S. note 16(b), HTSUS. Importers of products classified under subheading 7216.50.00, HTSUS, must also identify subheading 9903.80.01, HTSUS, at entry. Products of subheading 8431.20.00, HTSUS, on the other hand, are not subject to section 232 duties.

SUMMARY OF COMMENTS:

In the April 3, 2019 Notice, CBP informed the public of the filing of your Petition and invited interested parties to submit comments on or before May 3, 2019. During the comment period, CBP received a total of 14 comments. Seven comments support Petitioner’s position and seven comments are opposed to

² The Petitioner indicated that it believed the subject steel special profiles were from the United Kingdom and Germany. It is CBP’s belief that the steel special profiles covered by NY N293371 are of German origin; however, the reasoning applicable in this decision would apply equally to such products of U.K. origin (which are at this time also subject to additional duties).

Petitioner's position. Comments were received from steel special profiles manufacturers and suppliers, law firms, Members of the U.S. Senate and U.S. House of Representatives, unions, and local government officials.

Six commenters in favor of the Petition point out that Petitioner and its employees are negatively affected by Mannstaedt's imports from Germany and that the United States is deprived of section 232 duties, and urge CBP to remedy the situation by reconsidering NY N293371. One commenter opposing the Petition states that some of the comments politicize tariff classification and disregard tariff classification principles.

All seven commenters opposing the Petition claim that the profiles have the shape or outline of finished beams and bars, are intended for use as forklift parts at the time of importation and have no other practical use, and the processing after importation is minor and accounts for a relatively small percentage of the total value of the merchandise. They also explain that the imported profiles have non-standard shapes and are manufactured to the customer's specifications and meet the exacting tolerances and quality standards for forklift manufacturing.³

Two commenters in opposition to the Petition argue that the profiles cannot be classified solely based on General Rule of Interpretation ("GRI") 1, and that under GRI 2(a), unfinished parts, provided they have the essential character of the finished parts, are classified as if they are finished parts. The commenters argue that the incomplete mast rails and finger bars have the same form and basic structure as the complete beams/bars and should therefore be considered "blanks."⁴

One commenter states that steel profiles are often made of alloy steel and the profiles may be ineligible for heading 7216, HTSUS, which applies only to iron and nonalloy steel. However, heading 7228, HTSUS, contains the same legal language, "angles, shapes and sections," for profiles of "other alloy steel." Therefore, the analysis as to whether the instant merchandise is an unfinished part of a forklift truck is unaffected whether the rails and bars are made of nonalloy or alloy steel, and references to heading 7216, HTSUS, for nonalloy steel will include identical merchandise when made of alloy steel of heading 7228, HTSUS.

³ The seven commenters in opposition to the Petition claim that most profiles are cut to length before importation and are not straightened; machining/torch cutting creates clearance for a load roller and does not materially alter the shape of the profiles; drilling and/or welding is a minor process; and that the profiles may be subject to surface cleaning operations such as pickling, oiling, and shot blasting to prepare them for painting.

⁴ One commenter requested an opportunity to review exhibits 11 and 12 that were not released to the public. Members of the public may file a Freedom of Information Act ("FOIA") request at <https://www.cbp.gov/site-policy-notices/foia>.

ISSUE:

Whether the subject nonalloy steel mast rails and finger bars are classified under heading 7216, HTSUS, as angles, shapes and sections of iron or nonalloy steel, or under heading 8431, HTSUS, as parts suitable for use solely or principally with forklifts.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS, in accordance with the GRIs. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

GRI 2(a) states:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

The HTSUS provisions under consideration are as follows:

7216	Angles, shapes and sections of iron or nonalloy steel:
7216.50.00	Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded
	.
8427	Fork-lifts; other works trucks fitted with lifting or handling equipment:
	.
8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
8431.20.00	Of machinery of heading 8427

Note 1(f) to section XV, HTSUS, states that, “This section does not cover: ... Articles of section XVI (machinery, mechanical appliances and electrical goods).”

Note 2(b) to section XVI, HTSUS, states that parts that are “suitable for use solely or principally with a particular kind of machine ... are to be classified with the machines of that kind or in heading ... 8431”

In interpreting the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to GRI 2(a) provide, in relevant part:

(I) The first part of Rule 2 (a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, **provided** that, as presented, it has the essential character of the complete or finished article.

(II) The provisions of this Rule also apply to **blanks** unless these are specified in a particular heading. The term “**blank**” means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (e.g., bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape).

Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as “blanks”

The General ENs to chapter 72, note 1(n) describe angles, shapes, and sections of chapter 72 as “[p]roducts having a uniform solid cross-section along their whole length which do not conform to any of the definitions at (ij), (k), (l) or (m) above or to the definition of wire.”

EN 72.16 states, in pertinent part, the following:

Angles, shapes and sections are defined in Note 1 (n) to this Chapter.

The sections most commonly falling in this heading are H, I, T, capital omega, Z and U (including channels), obtuse, acute and right (L) angles. The corners may be square or rounded, the limbs equal or unequal, and the edges may or may not be “bulbed” (bulb angles or shipbuilding beams).

Angles, shapes and sections are usually produced by hot-rolling, hot-drawing, hot-extrusion or hot-forging or forging blooms or billets

The products of this heading may have been subjected to working such as drilling, punching or twisting or to surface treatment such as coating, plating or cladding - see Part IV (C) of the General Explanatory Note to this Chapter, **provided** they do not thereby assume the character of articles or of products falling in other headings.

The heavier angles, shapes and sections (e.g., girders, beams, pillars and joists) are used in the construction of bridges, buildings, ships, etc.; lighter products are used in the manufacture of agricultural implements, machinery, automobiles, fences, furniture, sliding door or curtain tracks, umbrella ribs and numerous other articles.

Petitioner is requesting that CBP reconsider the classification of the nonalloy steel mast rails and finger bars described in NY N293371. Petitioner contends that the merchandise is merely nonalloy steel special profile shapes classifiable under heading 7216, specifically under subheading 7216.50.00, HTSUS. Petitioner asserts that the use of GRI 2(a) is inappropriate because the merchandise is a semi-manufactured article, which meets the definition of an angle, shape, or section in note 1(n) to chapter 72, HTSUS. Moreover, Petitioner contends that the profiles must undergo significant manufacturing after importation to create a part suitable for use in the mast or carriage of a forklift.

The instant merchandise, which is imported in bundles of beams and bars of various sizes and shapes, is certainly described by the term “angles, shapes, and sections” set forth in note 1(n) to chapter 72, whether or not the product is a standard shape or a special shape designed for a particular application such as use in a lifting mast for a forklift truck. Heading 7216 includes U, I, H, L and T shapes as well as “other” shapes, such as special profiles of non-standard cross-section including those used in the manufacture of machinery and automobiles. See EN 72.16. In Headquarters Ruling Letter (“HQ”) 966522, dated December 22, 1994, CBP concluded that, “it is not disputed that ... S-shaped steel profiles [also known as upper carriage bars] are classified in subheading 7216.50.00, HTSUS.” CBP has also classified similar incomplete nonalloy steel profiles in subheading 7216.50.00, HTSUS. In NY N295858, dated May 3, 2018; NY N295670, dated April 27, 2018; and NY J82683, dated April 18, 2003, CBP classified nonalloy steel profiles used in the manufacture of forklift truck attachments under subheading 7216.50.00. Like the products at issue, the profiles in NY N295858 and NY N295670 were further machined, assembled into a frame, and painted after importation.⁵ Similarly, in NY I85271, dated September 13, 2002, CBP classified steel beams used in construction

⁵ One commenter points out that in NY J82683, *supra*, the attachments classified under heading 7216, HTSUS, could go on to many vehicles; in NY N295670, *supra*, the frame profiles classified under heading 7216, were made into a sliding arm clamp attachment not for use as a mast or finger bar after importation; in NY N295858, *supra*, the nonalloy steel profiles classified in heading 7216, HTSUS, were assembled into a frame, which was later made into a clamp attachment not for use as a mast or finger bar. The commenter misses the relevance of these rulings to the merchandise under consideration. Although not specifically beams or bars for masts or finger bars, the merchandise was in a similar state of manufacture as the instant merchandise.

that did not have the essential character of the finished parts in heading 7216, HTSUS.⁶

Accordingly, the merchandise at issue here is classifiable in heading 7216, HTSUS, by virtue of being worked, unless it has assumed the character of a part of a forklift.

In defining a “part” for tariff classification purposes, the courts have fashioned two distinct, but not inconsistent, tests for determining whether a particular item qualifies as such. See *Bauerhin Techs. Ltd. P’ship v. United States*, 110 F.3d 774, 778-79 (Fed. Cir. 1997). Under the first test, articulated in *United States v. Willoughby Camera Stores, Inc.* (“*Willoughby*”), 21 C.C.P.A. 322, 324, T.D. 46851 (1933), an imported item is a part only if it is “something necessary to the completion of that article without which the article to which it is to be joined, could not function as such article.” The second test, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9, 14, C.A.D. 602 (1955), equates “part” to “an imported item dedicated solely for use with another article.” *Bauerhin*, 110 F.3d at 779 (citing *Pompeo*, 43 C.C.P.A. at 13).

However, before examining whether the goods in question satisfy one or both of the aforementioned tests, we note that they only qualify to be “parts” of the good (a forklift) if they bear a “direct relationship” to the good, such that the good is the “primary article” of which the item is a component. See HQ 255855, dated May 27, 2015. Otherwise, as the Court of International Trade (“CIT”) and its predecessor, the Customs Court, have held, the item will be considered merely a “part” of whatever intermediate part constitutes the primary article. See *Mitsubishi Elecs. Am. v. United States*, 19 CIT 378, 383 n.3, 882 F. Supp. 171, 175 n.3 (1995) (“[A] subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole.”); *Liebert v. United States*, 60 Cust. Ct. 677, 686-87, 287 F. Supp. 1008, 1014, Cust. Dec. 3499 (1968) (holding that parts of clutches, which clutches are in turn parts of winches, are more specifically provided for as parts of clutches than as parts of winches).

CBP has consistently adhered to this principle by excluding parts of “primary articles” from HTSUS “parts provisions” where the primary articles themselves are parts classifiable in such provisions. For example, in HQ H169057, dated September 4, 2014, CBP ruled that a front frame designed to reinforce a wind

⁶ Two commenters in opposition to the Petition cite to HQ 965520, dated July 9, 2002, where elevator guide rails, which were cut to length, had the same shape as the finished article, and were subject to additional processing after importation, were classified in heading 8431, HTSUS. Elevator guide rails do not appear to be incorporated into a lifting mast but rather are installed in the elevator shaft. We are currently reviewing the analysis in HQ 965520, as well as in NY 181164, dated May 21, 2002, and NY A82738, dated May 13, 1996, and intend to initiate a process under 19 U.S.C. § 1625 to allow maximum degree of notice.

engine, which in turn constituted one of two components of a wind generator, could not be classified as part of the wind generator itself. Similarly, HQ H005091, dated January 24, 2007, excluded from heading 8708, which provides for motor vehicle parts, a trunk assembly that constituted one of several component parts of an automobile trunk lock. See *also* HQ 020958, dated November 28, 2008; HQ 963325, dated September 15, 2000. In sum, it is not enough that an item will eventually form a portion of another article. Rather the item must be processed to the point where it is no longer recognizable as a profile but instead has the character of a finished part.

In the instant case, finished mast beams and finger bars are eventually welded to other components of a forklift mast, a complex assembly of interlocking weldments formed of beams, bars, plates and tubing containing, rollers, bearings, brackets, chains and pulleys, and ultimately a hydraulic ram. For instance, as described by one forklift retailer, "... the mast is the vertical assembly on the front of the forklift that does the work of raising, lowering, and tilting the load. Most masts are 'three stage' meaning there are three channels on each side. The channels are similar in appearance to I-Beams."⁷ Another states that, "The mast is the vertical structure of a forklift that provides a supporting pathway for the carriage rollers and allows the forklift to raise and lower the forks and material it's carrying".⁸ From these descriptions, it is clear that a vertical lifting mast is comprised of much more than beams. The finger bars are horizontal cross bars that are components of the carriage assembly and attach to the mast beams across the front of the lift truck. The carriage assembly is fitted with the forks. Even though the full mast and carriage assembly may be classifiable under heading 8431, HTSUS, as a part of a forklift, heading 8431, HTSUS, does not cover parts of parts of machines of headings 8425 to 8430.

Furthermore, we note that the instant beams and bars are not joined to form the mast weldments in their condition as imported. Moreover, they do not contain the necessary angular cuts for clearance of the rollers, drilled holes for brackets, anchors, and other attachments for pulleys and chains. More importantly, they are not welded to the plates and bars necessary to create the shape and dimensions of an inner, intermediate or outer weldment of a mast. It is the weldments, which are assembled to slide smoothly against the rollers and are sold as a replaceable part.⁹ Similarly, the finger bars are not welded to the frame for attachment between the carriage and mast. Rather, the instant merchandise is simply the beams necessary to compose the weldments that form the inner, intermediate, or outer uprights of the

⁷ See Mast Types and Their Advantages, <https://www.summithandling.com/mast-types-advantages/> (last viewed May 31, 2019).

⁸ See Glossary of Forklift Terminology and Definitions, <https://www.mcfa.com/en/mcfa/resources/glossary-forklift-terminology-definitions> (last viewed May 31, 2019).

⁹ See Lifting Masts Parts Manuals, <http://www.lift-tek.com/support.html?sel=s2> (last viewed May 31, 2019).

completed mast and crossbars necessary to compose a portion of the carriage.¹⁰ Accordingly, while the subject merchandise may ultimately be destined for incorporation into a forklift, it is not identifiable as such based on its condition as imported. Indeed, to the extent a weldment constitutes a part of a forklift, the profiles have not even assumed the character of a weldment.

Commenters in opposition to the Petition emphasize that a portion of the merchandise is cut to a specified customer length and that it is imported to customer specification. Initially, the statement itself concedes that some portion of the imported merchandise is not cut to a specified length for use in the mast assembly. The commenters also do not state that the merchandise is cut to the exact length used in the creation of the weldments for the mast. In fact, one of the submissions shows a picture of “pre-processing mast rail in the condition as it arrives” which is at least three times longer than the rail shown in the adjacent picture of “post-processing mast rail” prior to incorporation into a mast assembly.” Additionally, one commenter notes the angled cut at the top of the rail necessary for clearance of the rollers, though the inner rail does not require this angled cut because no load roller is attached. The commenter also cites to additional drilling and welding for the bearing pad attachment and stub shafts for load rollers.

Commenters in opposition to the Petition also uniformly state that the beams seldom need to be straightened after importation. Again, this statement thus acknowledges the fact that some beams may need straightening or are rejected. All commenters in opposition to the Petition agree that the beams need to be drilled and welded to plates and cross bars before acquiring the shape and dimensions necessary for assembly into a mast as well as subject to surface cleaning operations, such as pickling, oiling, and shot blasting, to prepare them for painting. Finger bars must be cut to size and notched in specific places along their length depending upon their placement as upper or lower bars, as well as cleaned, painted, and welded to the actual carriage assembly.

¹⁰ As the merchandise is fully described by the terms of heading 7216, the issue is whether it is excluded from classification under note 1(f) to section XV as an article of section XVI. Note 1(f), which excludes “Articles of Section XVI” (emphasis added), does not apply in this case because heading 8431, HTSUS, merely covers “parts” of forklifts. In this respect, HTSUS legal notes that operate to exclude parts of articles (and not just the articles themselves) from a given chapter or section explicitly indicate as such. For example, in note 3(k) to chapter 71, the exclusion specifically identifies “machinery, mechanical appliances or electrical goods, or parts thereof, of Section XVI.” (Emphasis added.) The exclusion note at issue in this case, note 1(f) to section XV, is tailored to exclude only articles of section XVI, and not their parts, from section XV. See HQ 561353, dated September 19, 2002. Accordingly, even if the subject steel profile shapes were *prima facie* classifiable under heading 8431, HTSUS, which is not the case, the instant beams and bars are not excluded from classification under heading 7216 by operation of note 1(f) to section XV.

Commenters further state that the merchandise is manufactured to tight tolerances. We obtained the invoices for a random entry of the merchandise wherein an importer claimed classification in heading 8431, HTSUS. Whereas some invoices indicated certain specifications, others provided for a range of acceptable characteristics of the imported merchandise. This is consistent with the manufacturing process described in the original submission for NY N293371, which showed no steps beyond those necessary to produce a rail or bar. Hence, regardless of whether manufactured to a tight tolerance, without the various cuts, notches, drilled holes and most importantly, welding, that takes place post-importation, there is nothing that dedicates these beams and bars for use solely in a forklift truck, or even for the weldment of the lifting mast or carriage, in accordance with *Bauerhin*.¹¹

Commenters opposing the Petition also claim that the merchandise is not a part in and of itself, but a blank for a part of a forklift under GRI 2(a). The EN excludes semi-manufactures not yet having the shape of finished articles, such as bars and rods, from classification as unfinished articles under GRI 2(a). See ENs to GRI 2(a), *supra*. As the process and control documents submitted with the ruling request for NY 293371 state, the profiles and bars in their condition as imported are just that: beams and bars. They certainly do not have the shape of the finished forklift part, namely the mast or carriage. Indeed, the process and control documents initially submitted for NY 293371 referred to the products as profiles and bars.

Additionally, we find that the example listed in the EN is particularly instructive to understand the meaning of the term “blank.” The bottle preforms have the tubular shape of a bottle, with one closed and one open end. The threads at the open end of the preform that identify the tubular shape as one which will only be fashioned into a bottle are already formed. By contrast, the process in creating a lifting mast and carriage using the imported beams and bars requires significant processing to dedicate their shape to use in a forklift mast or bar carriage. The threads on the bottle preform are like the notching, welding, drilling or cutting that must be performed on the instant beams and bars. The tubular shape specifically with one open and one closed end forms the shape that needs only be expanded to form a bottle. Here, a significant amount of welding to other metal profiles and plates must be performed in order to create the shape of the object that is incorporated into the mast or carriage. The bars and beams do not have the approximate size or shape of the forklift mast and carriage, or even of the weldment components of the mast

¹¹ Furthermore, there is nothing about the chemistry of the steel used in the profile shapes that dedicates them to a specific use. While the particular chemistry of steel may make it stronger, harder, more malleable, more brittle or ascribe other physical characteristics to the product, customer specifications for the chemistry of the steel do not dedicate the steel to a specific use beyond a use that necessitates that particular physical characteristic.

and carriage. As such, the instant merchandise cannot be considered a blank of a part for a lifting mast for a forklift.

Therefore, we concur with Petitioner that by application of GRIs 1 and 6, the nonalloy steel mast beams and finger bars in NY N293371 are steel special profile shapes of heading 7216, HTSUS, classified specifically under subheading 7216.50.00, which provides for angles, shapes and sections of iron or nonalloy steel, other angles shapes and sections not further worked than hot-rolled, hot-drawn or extruded.¹²

HOLDING:

Your Petition is granted. By application of GRIs 1 and 6, the instant nonalloy steel special profiles are classified in heading 7216, HTSUS, specifically in subheading 7216.50.00, HTSUS, which provides for “Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded.” The 2019 column one, general rate of duty is free.¹³

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at <https://hts.usitc.gov/current>.

The steel special profiles from Germany¹⁴ are currently subject to 25 percent *ad valorem* section 232 duties under subheading 9903.80.01, HTSUS, pursuant to subchapter III, chapter 99, U.S. note 16(b).

¹² One commenter cites to NY F83480, dated March 13, 2000, which also involves lifting mast rails. There, the rails had been cut to length, notched, milled, and drilled with holes for assembly into single or multi-stage forklift masts. However, as the merchandise in that ruling had not been welded into the shape of an inner or outer mast for incorporation into the mast assembly, the merchandise is substantially similar to the instant merchandise in ways material to the determination here. Hence, NY F83480 is also revoked by this decision.

¹³ Rails and bars of alloy steel are classified under heading 7228, HTSUS, specifically under subheading 7228.70.3041 and subheading 7228.70.3081, HTSUSA. Subheading 7228.70.3041, HTSUSA, provides for: Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or nonalloy steel: Angles, shapes and sections: Hot-rolled, not drilled, not punched and not otherwise advanced: Other: With a maximum cross-sectional dimension of 76 mm or more: Other.” Subheading 7228.70.3081, HTSUSA, provides for: Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or nonalloy steel: Angles, shapes and sections: Hot-rolled, not drilled, not punched and not otherwise advanced: Other: With a maximum cross-sectional dimension of less than 76 mm: Other.” The 2019 column one, general rate of duty for both subheadings is free. See Subchapter III, chapter 99, U.S. note 16, HTSUS, for additional duties that apply.

¹⁴ See *supra* note 1, at 2.

Section 232 remedies are based on the country of origin. At the time of importation, the importer must report the chapter 99 subheading applicable to the product classification in addition to the chapter 72 subheading listed above. The relevant Proclamations are subject to periodic amendment of the exclusions, so the importer should exercise reasonable care in monitoring the status of goods covered by the Proclamations and the applicable chapter 99 subheadings.

Please be advised that the steel special profiles may be subject to antidumping and countervailing duties ("ADD/CVD"). We note that the U.S. Department of Commerce is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of ADD/CVD orders. Written decisions regarding the scope of ADD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by CBP. The Import Administration can be contacted at <http://www.trade.gov/ia/> (see Contact Information). A list of current ADD/CVD cases at the U.S. International Trade Commission can be viewed on its website at <http://www.usitc.gov> (click on "Import Injury" and then "Antidumping and Countervailing Duty Investigations"). ADD/CVD deposit and liquidation messages can be searched using ACE, the system of record for ADD/CVD messages, or the ADD/CVD Search tool, at <http://adcvd.cbp.dhs.gov/adcvdweb/>.

EFFECT ON OTHER RULINGS:

NY N293371, dated February 8, 2018, is hereby revoked. CBP is also revoking or modifying any other rulings involving substantially identical merchandise, such as NY F83480 (mast rails), *see supra* note 11, at 10, to reflect the analysis contained in this decision. Pursuant to 19 U.S.C. § 1516(b) and 19 C.F.R. § 175.22, this constitutes CBP's decision and it will be published in the *Federal Register* and the *Customs Bulletin*.

Sincerely,

Myles B. Harmon, Director
Commercial and Trade Facilitation Division

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